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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1078

WORLD-WIDE VOLKSWAGEN CORPORATION and SEAWAY VOLKSWAGEN, INC.,

Petitioners,

v.

THE HONORABLE CHARLES S. WOODSON, District Judge of Creek County, State of Oklahoma, KAY ELOISE ROBINSON, EVA MAY ROBINSON, a minor, by and through her father and next friend, HARRY ROBINSON, GEORGE SAMUEL ROBINSON, a minor, by and through his father and next friend, HARRY ROBINSON, and HARRY ROBINSON, individually,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPLY BRIEF FOR PETITIONERS

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I

Respondents' arguments are in conflict with the controlling decisions of this Court.

Respondents in their brief ask nothing less than that this Court forsake the jurisdictional standards of *International Shoe, Hanson* v. *Denckla, Shaffer* and *Kulko.* They pass lightly over the "minimum contacts" requirement and directly challenge the necessity of "purposeful activity" under these decisions. While this Court has is-

sued repeated reaffirmations of *Hanson* v. *Denckla* by citation and quotation in both *Shaffer* and *Kulko*, respondents unabashedly attack the principles enunciated by the Court in that case. (R.Br. pp. 9-10).*

Kulko flatly lays down two threshold requirements before the Fourteenth Amendment Due Process Clause will permit personal jurisdiction over a nonresident: There must be both reasonable notice and also "a sufficient connection between the defendant and the forum State as to make it fair to require defense of the action in the forum." 436 U.S. at 91. The inquiry is not, as respondents suggest, simply one of "fairness." The mandate is that a "sufficient connection" must first be found. Not every connection will suffice. If the connection is attenuated, if it amounts to less than "minimum contacts," or if it is not accompanied by "purposeful activity," a state court operating within a federal system may not assume jurisdiction.

That "minimum contacts" and "purposeful activity" are essential requirements in every case is reiterated time and again in the decisions of this Court. In *Kulko* the Court cites and quotes the "minimum contacts" language of *International Shoe* at 436 U.S. at 92. At pages 93 and 94 it quotes at length and with approval the "purposeful activity" language of *Hanson* v. *Denckla*. It expressly notes that the unilateral activities of those who claim some relationship with the nonresident defendant cannot satisfy the requirement of contact with the forum state. In *Kulko* it is pointed out that the mere fact that the former wife elected to move to California is no reason to subject the former husband to suit there, even if he

* References in parentheses preceded by R.Br. are to the Brief of Respondents.

had incidental attenuated contacts with California by reason of his sending or permitting the children to live there. Similarly, the fact that respondents in this case chose to take their vehicle to Oklahoma, even if travel to Oklahoma may have been conceivable to petitioners, is too remote and attenuated to meet the "minimum contacts" test and makes no pretense of complying with the "purposeful activity" test.*

* The Court, in the body of its opinion in *Kulko*, cites *Hanson* v. *Denckla* no less than five times. The statements made by the Court in *Kulko* with respect to *Hanson* v. *Denckla* can just as easily be made in this case:

> "Like any standard that requires a determination of 'reasonableness,' the 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present. *Hanson* v. *Denckla*, 357 U.S. 235, 246 (1958).
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> "As we have emphasized:
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> > 'The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. . . . [I]t is essential in each case that there be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State. . . .' *Hanson* v. *Denckla*, *supra*, 357 U.S. at 253.
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> "As in *Hanson* v. *Denckla*, 357 U.S., at 252, the instant action involves an agreement that was entered into with virtually no connection with the forum State.
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> "[T]he fact that [the forum State] may be the 'center of gravity' for choice-of-law purposes does not mean that [the forum State] has personal jurisdiction over the defendant. *Hanson* v. *Denckla*, supra, at 254.
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> • • •
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> "We therefore believe that the state courts in the instant case failed to heed our admonition that 'the flexible standard of *International Shoe*' does not 'heral[d] the eventual demise of all restrictions on the personal jurisdiction of state courts.' *Hanson* v. *Denckla*, 357 U.S., at 251." *Kulko* v. *Superior Court*, 436 U.S. 92, 93-94, 97, 98, 101 (1978).

The Court in *Shaffer*, 433 U.S. at 215, quotes at length the *Hanson* v. *Denckla* language which disavows the "center of gravity" as a basis for jurisdiction, and emphasizes that "the issue is personal jurisdiction, not choice of law. It is resolved by considering the acts of appellants." That language is again quoted in *Kulko*. 436 U.S. at 98. It is difficult to conceive how much more clearly this Court could have articulated the point that abstract arguments of fairness or convenience, such as those offered by respondents, cannot be considered without first finding minimum contacts and purposeful activity directed to the forum. As *Kulko* points out at page 100, the fact that a forum may have "substantial interests" in the subject matter and in some of the parties is insufficient to make it a "fair forum." Thus, even if it may be argued that the accident in Oklahoma makes Oklahoma the center of gravity, an Oklahoma center of gravity cannot overcome an absence of minimum contacts or of purposeful activity.

The pointed admonition of *Hanson* v. *Denckla*, reaffirmed in *Kulko* (436 U.S. at 101), is entirely relevant here:

> "[T]he flexible standard of *International Shoe* does not herald the eventual demise of all restrictions on the personal jurisdiction of state courts."

Absent minimum contacts and purposeful activity of petitioners in Oklahoma, there can be no Oklahoma jurisdiction.

II

There is a total absence of minimum contacts and of purposeful activity in this case.

Respondents, in effect, concede an absence of minimum contacts. The furthest reach of any contact asserted by them appears in their brief at page 7. Having failed to

show petitioners' minimum contacts even through "marketing channels," respondents argue "it is only a short step in logic" to find such contacts "when the customer himself" in the possession of a mobile product "brings the product into the forum state himself." But the rationale of the decisions of this Court, articulated most recently in *Kulko*, is precisely to the contrary. Particularly telling in *Kulko* is the Court's repetition of the *Hanson* v. *Denckla* quotation (436 U.S. at 93) regarding "the unilateral activity" of a plaintiff as a basis for jurisdiction.

The record is clear. In this case there is not even the remotest activity by Seaway and World-Wide directed to the exploitation of the Oklahoma market. They "had no reason to expect to be haled before an [Oklahoma] court." *Shaffer* v. *Heitner*, 433 U.S. at 216; *Kulko* v. *Superior Court*, 436 U.S. at 97-98.

III

The cases cited by respondents are either constitutionally defective or are irrelevant.

Respondents' exhaustive survey of federal and state "long-arm" decisions since *International Shoe* has produced only one isolated case, *Reilly* v. *Phil Tolkan Pontiac, Inc.*, 372 F. Supp. 1250 (D.N.J. 1974), in which a court exercised jurisdiction over a nonresident retailer solely upon the ground that the retailer should have foreseen his product being taken by his customer into a distant forum. It is submitted that the *Reilly* case, to the extent it is consistent with the present decision of the Oklahoma court, places an unconstitutional burden on local sellers of consumer goods.

In each case cited by respondents, other than *Reilly*, there is a colorable showing that the manufacturer de-

fendant had undertaken some purposeful activity in the forum state or had derived economic benefits from his products being sold in the forum or to its residents. In none of these cases was the mere happenstance of the accident in the forum—the circumstance now before this Court —sufficient to sustain jurisdiction.

That there are jurisdictionally cognizable differences between sellers of goods at different levels is indisputable. A multi-billion dollar manufacturer engaged in national distribution is vastly different from the single owner business which sells the manufacturer's products to local customers in a single community of a single state. "[A] given set of circumstances establishes state jurisdiction over one type of defendant but not over the other." *Shaffer* v. *Heitner,* 433 U.S. at 186, 204 n. 19. Even respondents (R.Br. p. 19) recognize that different defendants may require different treatment. What they fail to recognize, however, is that the difference in treatment does not arise because of some undefined difference in size or ability to litigate at a distance from home. The critical distinction between a national distributor and a local seller is that the marketing plan of the national distributor may be of such a character as to permit a finding of purposeful activity directed toward the forum state, resulting in the requisite minimum contact with that state. No such purposeful act or minimum contact appears in this case. The constitutional prerequisites for jurisdiction are thus absent.

CONCLUSION

For all the reasons set forth, petitioners request that this Court reverse the Oklahoma Supreme Court's denial of a writ of prohibition and direct that the writ be issued, prohibiting the respondent trial judge from exercising personal jurisdiction over petitioners.

Respectfully submitted,

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